

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN F. KNIGHT, JR., and
ALEASE S. SIMS, et al., individually
and on behalf of others similarly
situated,

Plaintiffs and
Plaintiffs-Intervenors,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

THE STATE OF ALABAMA, et al.,

Defendants.

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Civil Action No.
2:83-CV-1676-HLM

**SETTLEMENT AGREEMENT
BETWEEN THE KNIGHT-SIMS PLAINTIFFS AND
DEFENDANT UNIVERSITY OF WEST ALABAMA**

I

Purpose and Basis of the Agreement

This Agreement is entered into by John F. Knight, Jr., and Alease S. Sims et al., on behalf of themselves and the plaintiff class they have been certified to represent, and by defendant University of West Alabama (hereafter “defendant

University”). The purpose of this Agreement is to specify the terms on which the Knight-Sims plaintiffs will join defendant University in requesting that the Court enter a judgment finally dismissing the claims against defendant University in this action.

Defendant University acknowledges that since entry of the Court’s 1991 Remedial Decree,¹ it has been enjoined from maintaining vestiges of *de jure* segregation and from engaging in practices which have the effect of impeding the desegregation of the state’s institutions of higher education. Since then, substantial progress in conditions, policies and practices at defendant University has been achieved. The parties agree that this progress should continue. The parties further agree that continued progress does not depend on continued federal court supervision. It is in this spirit that the parties have reached this Settlement Agreement. ("Agreement").

Applicable desegregation law requires the Court to determine that vestiges of segregation have been eliminated to the extent practicable and consistent with sound educational practices. By entering into this Agreement, the Knight-Sims plaintiffs acknowledge that defendant University has satisfied this legal burden.

¹ *Knight v. Alabama*, 787 F.Supp. 1030, 1377 et seq. (N.D. Ala. 1991), *aff’d in part and rev’d in part*, 14 F.3d 1534 (11th Cir. 1994).

Similarly, by entering into this Agreement, defendant University pledges to continue the substantial progress that has been achieved over the course of this litigation in redressing historical discrimination in higher education against African-American citizens of this state. To that end, this Agreement's primary focus is on continuing to improve African American participation in Alabama's system of public higher education. Without limiting its agreement to continue this progress in all aspects of its institutional life, defendant University agrees to take the following specific steps.

II African-American Representation on the Faculties and at the EEO-1 Administrative Level of Defendant University

1. Defendant University agrees that it will develop and implement a Strategic Diversity Plan. Development of the Strategic Diversity Plan shall commence no later than the date this Agreement is finally approved by the Court, and implementation of the Plan shall begin no later than one year later.

2. Defendant University will develop and tailor its Strategic Diversity Plan to the circumstances of its own institutional circumstances, utilizing best practices that are being developed nationally and complying with the relevant legal and constitutional guidelines. However, at a minimum, defendant University

agrees as follows:

a. Defendant University will fully include representatives of African Americans on its campus and in its larger service community in the development and implementation of the Strategic Diversity Plan. African-American student, faculty and staff organizations at defendant University and the Minority Recruitment and Retention Committee of the University shall be permitted to designate representatives to participate in the development of the Plan. The objective will be to make the Strategic Diversity Plan the product of inclusion and consensus. The parties acknowledge that the concept of diversity should encompass all under-represented elements of the community, not just African Americans. Nevertheless, in Alabama, where the history and effects of segregation are well known, faculty and EEO-1 administrative level diversity will of necessity include increasing African-American representation.

b. The Strategic Diversity Plan will include the development of dynamic goals and timetables for achieving a critical mass of African-American members of the defendant University's faculty and administration, not as legally or contractually enforceable quotas but as standard management techniques for determining the Plan's effectiveness. These goals and timetables shall be subject to periodic review and modification in light of experience with implementation of

the Plan and changing circumstances.

c. The President and all deans and department heads will be held accountable for, and their job performance shall be evaluated, at least in part, on the basis of, their achievement of the objectives of the Strategic Diversity Plan.

d. The Strategic Diversity Plan will require that African-American representation be on all search committees for presidents and all EEO-1 level administrative positions and, to the extent practicable, on all search committees for faculty.

e. The Strategic Diversity Plan shall require that diversity be an important selection criterion for all faculty and administrative positions.

3. The Knight-Sims plaintiffs acknowledge that the Strategic Diversity Plan developed by Auburn University, finalized on May 4, 2005, and available on Auburn's web site, meets the requirements of this Agreement.

4. Defendant University agrees to assign oversight of the implementation plan to a Vice President or other cabinet level administrator.

5. Defendant University agrees that its Strategic Diversity Plan shall be endorsed by its Board of Trustees.

6. Defendant University agrees to attend annual conferences with other defendant universities to review and critique the development, terms and

implementation of their strategic diversity plans and to exchange information about best practices. Representatives of the defendant University's African-American faculty organization shall be allowed to attend and to participate fully in these conferences. Defendant University agrees to post on its web site a report of the annual conference and any recommendations proceeding therefrom, including any minority reports and recommendations.

7. Defendant University agrees to post to its web site by February 1, 2007, and by February 1 of each year thereafter a report on the implementation of its Strategic Diversity Plan that, at a minimum, includes the following:

- a. Racial composition data of student body (total, undergraduate, and graduate) from 1991 to the present;
- b. Racial composition of the students awarded bachelor, graduate and professional degrees;
- c. Racial composition of full-time faculty from 1991 to the present;
- d. Racial composition of presidents, provosts, vice presidents, deans, department chairs and other EEO-1s from 1991 to the present;
- e. Racial analysis of faculty and administrative positions filled during the year, including the number of African Americans considered for these

vacancies;

f. An assessment of progress by the institution in enhancing diversity and/or moving toward its diversity goals, with an emphasis on the representation of African-American faculty, EEO-1, and students.

8. To the extent it has not already done so by the time this Agreement is finally approved by the Court, defendant University agrees to make good faith and reasonable efforts to respond to the Knight-Sims plaintiffs' discovery requests with respect to the issue of financial aid.

III.

Dismissal of Action and Settlement Implementation.

A. Preliminary Court Approval of Agreement.

Promptly after execution of this Agreement, but in no event later than 10 days after the execution of this Agreement, the parties by joint motion shall submit the Agreement to the District Court requesting that the Court enter an order granting preliminary approval of the Agreement. The District Court shall be requested to direct the giving of notice to the plaintiff class and to schedule a fairness hearing. In the event the Court declines preliminarily to approve the Agreement, or finds the Agreement does not provide an adequate basis for issuing notice and scheduling a fairness hearing, then the entire Agreement shall become

null and void unless the parties promptly agree in writing to other mutually satisfactory settlement provisions and agree to proceed with the Agreement, subject to approval by the Court.

B. Final Judgment.

At the final hearing on fairness, adequacy, and reasonableness of the settlement as set forth in this Agreement, the parties, and each of them, agree to cooperate in good faith to achieve the expeditious approval of the settlement, and shall request the Court to grant final approval of the Agreement and to enter judgment thereon ("Judgment"). In order to satisfy the requirements of the Agreement, the Judgment must include, by specific statement or by reference to the Agreement to the extent permitted by law and the rules of court, provisions which:

1. Affirm certification of the proceeding as a class action pursuant to Rule 23, Fed. R. Civ. P., with the plaintiff class as previously defined by the Court;
2. Find that the notice given to class members satisfied the requirements of both Rule 23, Fed. R. Civ. P, and due process, and that the Court has jurisdiction over the class;
3. Find that the Agreement is fair, adequate, and reasonable in all respects;
4. Order that defendant University shall implement the Settlement Agreement;

5. Incorporate the Agreement within the Judgment to enable the District Court to exercise jurisdiction over any subsequent dispute involving the Agreement;
6. Pursuant to Rule 42(b), Fed. R. Civ. P., sever from this action the claims that are pending resolution of the Knight-Sims plaintiffs' appeal from this Court's orders of October 5, 2004, and February 10, 2005, denying plaintiffs' requests for relief based on said claims;
7. Subject only to final resolution of the claims pending on appeal or severed, find that on judicial approval of this Agreement, including the commitments contained herein, defendant University shall be in full compliance with the law, and that, therefore, there are no continuing policies or practices of defendant University, or remnants, traceable to *de jure* segregation, with present discriminatory effects which can be eliminated, altered or replaced with educationally sound, feasible and practical alternatives or remedial measures;
8. Subject only to final resolution of the claims pending on appeal or severed, dismiss on the merits and with prejudice (I) all claims against defendant University set forth in the complaint, as amended, (ii) all claims against defendant University set forth in the complaint-in-intervention, and (iii) all claims against defendant University of racial discrimination asserted before the Court throughout the pendency and trials of the action including, without limitation, claims of system or institutional aspects, features, policies and practices alleged to be remnants of the *de jure* system.

C. Finality and Term of Agreement.

This Agreement shall become final upon the occurrence of the following events: (I) approval of the Agreement in all respects by the District Court as

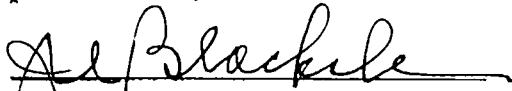
required by Rule 23(e), Fed. R. Civ. P., and (ii) entry of the Judgment as provided for above.

The term of the provisions of this agreement shall be for five years from the date it is finally approved by the Court. The Agreement shall be binding upon the successors and assigns of the parties and shall inure to their benefit.

D. Enforcement.

The parties, including all class members, irrevocably submit to the exclusive jurisdiction of the United States District Court for the Northern District of Alabama any suit, action, proceeding or dispute arising out of or relating to the Agreement (including any alleged nonperformance of the Agreement or the Judgment) or to the applicability of the Agreement. All parties agree that the District Court has complete jurisdiction and power to enforce this Agreement. The parties intend by this paragraph to vest the District Court with full jurisdiction for enforcement as contemplated by the case of *Kokkonen v Guardian Life Ins. Co.*, 511 U.S. 375 (1994).

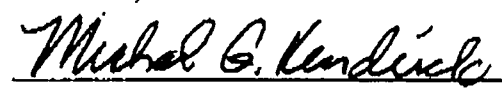
For the Knight-Sims Plaintiffs and
plaintiff class,



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Date: June 8, 2006

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Date: June 8, 2006